



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1995

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-987

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 32325.

The City of Houston (the "city") received five requests for various documents related to "Class A" Houston Police Officers. On behalf of the city, you assert that such documents are excepted from required public disclosure pursuant to section 552.103 of the act.

Section 552.103 excepts from required public disclosure information relating to litigation "to which the state or political subdivision . . . is or may be a party." Gov't Code § 552.103(a). More specifically, section 552.103(a) excepts from required disclosure, information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

This exception is designed to keep the Open Records Act from operating as a method of avoiding the rules of discovery. Attorney General Opinion JM-1048 (1989) at 4. In Open Records Decision No. 551 (1990) at 3, this office stated:

[Section 552.103] enables governmental entities to protect their position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery, if at all. [citations omitted.] We do not believe that the Open Records Act was intended to provide parties involved in litigation any earlier or greater access to information than was already available directly in such litigation.

Section 552.103(a) requires concrete evidence that litigation is realistically contemplated; it must be more than mere conjecture. Open Records Decision Nos. 518 (1989) at 5, 328 (1982). Thus, to secure the protection of this exception, a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990); *see also* Open Records Decision No. 588 (1991) (contested case under Administrative Procedure Act is litigation for purposes of section 552.103(a) exception). Whether litigation is actually pending must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

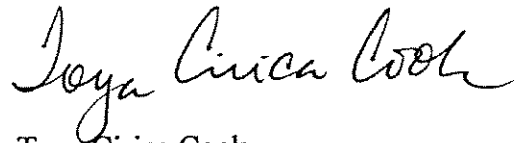
You have submitted court documents indicating that the city is currently engaged in litigation concerning the information contained in the requested documents. We have reviewed the documents at issue in the five open records requests and conclude that they are excepted from required public disclosure under section 552.103(a) of the act.¹ However, we note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records.

¹The requestor asserts that portions of the requested information have already been provided to opposing parties in the litigation. If the documents at issue have been provided to the other parties in litigation, they must also be disclosed to the requestor. We note that section 552.103(a) is not applicable to information that has previously been disclosed to an opposing party in the litigation. We also note that the Open Records Act prohibits selective disclosure of information. Gov't Code § 552.007.

If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Toya Cirica Cook". The signature is fluid and cursive, with the first name "Toya" being the most prominent.

Toya Cirica Cook
Assistant Attorney General
Open Records Division

TCC/RHS/rho

Ref: ID# 32325

Enclosures: Submitted documents

cc: Mr. Fred A. Keys, Jr.
Office of Legal Counsel
Houston Police Officer's Assoc.
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(w/o enclosures)